



February 16, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-0600

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144279.

The City of El Paso Police Department (the "department") received a request for five enumerated categories of information pertaining to a specified job posting. You indicate that you have released to the requestor the information responsive to the request, except for certain information which you have highlighted and which is contained in the submitted exhibits B, C, D, E, and F.¹ You assert that this highlighted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117 of the Government Code states in pertinent part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

¹We understand the documents in exhibit E comprise a representative sample. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure[.]

Gov't Code § 552.117(2). Exhibits E and F contain the social security number, home address, and home telephone number of peace officers, as well as information that reveals whether the officers have family members. We agree that this information, which you have highlighted, must be withheld pursuant to section 552.117(2). We note that section 552.117(2) also requires the department to withhold an officer's *former* home address and telephone number. See Open Records Decision No. 622 (1994).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right to privacy and may except from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from disclosure by the common law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to records pertaining to a sexual harassment investigation. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of those documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* You have highlighted information in exhibit C which, you state, "identifies a sexual harassment complainant." According to the document itself, however, the individual is identified only as a victim of "unprofessional conduct." We find no information in exhibit C that meets the first prong of the above-stated test. We therefore do not agree that section 552.101 in conjunction with the common law right to privacy requires the city to redact the highlighted information in exhibit C. As you assert no other exception for this information, it must be released to the requestor.

Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the release of the internal record or notation would interfere with law enforcement or prosecution[.]" When section 552.108(b)(1) is claimed, the agency claiming it must reasonably explain, if the information does not supply the

explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3(1986); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You have highlighted information in exhibits B, D, and F, the release of which, you assert, would interfere with law enforcement.

The information at issue in exhibit B consists of the mobile telephone number of an individual with specific law enforcement responsibilities. This office has held that the public release of such information would interfere with law enforcement or crime prevention. Open Records Decision No. 506 (1988). We agree that you may withhold the information you have marked in exhibit B.

The information at issue in exhibit D identifies certain conduct of a named officer which is indicated to have violated department policy. You explain that this office concluded in a prior ruling that the department's "use of force policy" may be withheld under section 552.108. You argue that the information at issue here that indicates an officer's alleged violation of that policy should therefore also be excepted by section 552.108. We disagree. Unlike a release of the "use of force policy" as a whole, we do not find that the release of the information you have highlighted in the present context would interfere with law enforcement or crime prevention. Accordingly, the department must release the information in exhibit D.

You argue that the release of the information you have highlighted in exhibit F would reveal "confidential law enforcement intelligence information," information specific to undercover operations, "police tactical information," and "information relating to the identity of confidential informants." In Open Records Decision No. 252 (1980), this office stated that where investigative techniques or procedures used in law enforcement are commonly known, the statutory predecessor to section 552.108 did not operate to except the information from required public disclosure. Open Records Decision No. 252 at 3 (1980). We find no information in exhibit F that reasonably could be said to reveal the identity of a confidential informant. Much of the information at issue reveals investigative procedures or law enforcement techniques that are commonly known. Upon review of the "intelligence information" to which you refer, we find the information is general in nature and does not reveal the particulars of any investigation or intelligence operation. We agree that the department may withhold under section 552.108(b)(1) a portion of the highlighted information pertaining to the number of offices utilized by a department investigative unit and the locations of its operations. We have marked the information at issue. We conclude that the remaining information in exhibit F for which you assert section 552.108, if released, would not interfere with law enforcement or crime prevention. This information must therefore be released to the requestor.

In summary, section 552.117(2) requires the department to withhold the social security numbers, home addresses, and home telephone numbers of peace officers, as well as information that reveals whether the officers have family members. The department may withhold under section 552.108 the mobile telephone number contained in exhibit B and the information we have marked in exhibit F. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

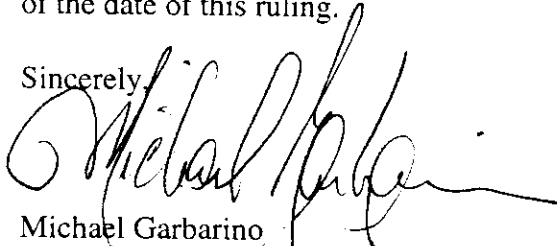
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144279

Encl. Submitted documents

cc: Mr. Thomas Barbee
EPMPOA
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(w/o enclosures)